

Senate Bill No. 1170

CHAPTER 653

An act to amend Section 1770 of the Civil Code, and to amend Sections 787 and 789.10 of, and to add Section 785.4 to, the Insurance Code, relating to insurance.

[Approved by Governor September 27, 2012. Filed with
Secretary of State September 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1170, Leno. Senior insurance.

(1) Existing law makes it unlawful to engage in specified practices, unfair methods of competition, and unfair or deceptive acts or practices in a transaction intended to result or that results in the sale or lease of goods or services, including making false or misleading statements concerning the existence of price reductions, or the home solicitation of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for purposes of paying for home improvements. A consumer who suffers damages as a result of the use or employment of the prohibited acts or practices may bring an action to recover civil damages of at least \$1,000, and, if the victim is a senior citizen and the trier of fact makes specified findings, including that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct, to recover an additional amount of up to \$5,000.

This bill would expand that provision to include advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements that does not include a statement that the person disseminating the statement is not authorized to file an initial application for veterans' benefits or that the event is not sponsored by or affiliated with specified veterans' organizations, including the United States Department of Veterans Affairs. The bill would also make a conforming change.

(2) Existing law provides that all insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.

This bill would make it unlawful for an insurance agent who is not licensed as an attorney to deliver to a person who is 65 years of age or older, or for an insurance agent who is licensed as an attorney to deliver to a person who is 65 years of age or older, a living trust or other legal document, other than an insurance contract or other insurance product document, except as specified.

(3) Existing law requires any person who meets with a senior in the senior's home to deliver a specified notice to the senior in writing and in 14-point type no less than 24 hours prior to that individual's initial meeting in the senior's home.

This bill would additionally require the notice to be delivered no more than 14 days prior to the meeting. The bill would also require that the notice be a stand-alone document in 16-point, rather than 14-point, type, that the notice include specified information regarding the agent, including his or her full name and license number, and that the notice include a specified statement.

(4) Existing law sets certain standards with regard to any advertisement, as defined, or other device designed to produce leads based on a response from a potential insured that is directed to a person 65 years of age or older, including, but not limited to, disclosing certain information, not using certain language, names, letters, or symbols, and not using specified deceptive or misleading practices and materials.

This bill would change the definition of advertisement to also include worksheets, questionnaires, or other materials designed to collect personal or financial information about a prospective insured or annuitant. The bill would also add veterans organizations or agencies and the United States Department of Veterans Affairs to the list of those entities that cannot be used in specified deceptive or misleading advertising practices and materials.

The people of the State of California do enact as follows:

SECTION 1. Section 1770 of the Civil Code is amended to read:

1770. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

- (1) Passing off goods or services as those of another.
- (2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.
- (3) Misrepresenting the affiliation, connection, or association with, or certification by, another.
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services.
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.
- (6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact.

(9) Advertising goods or services with intent not to sell them as advertised.

(10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(11) Advertising furniture without clearly indicating that it is unassembled if that is the case.

(12) Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller.

(13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

(14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

(15) Representing that a part, replacement, or repair service is needed when it is not.

(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

(17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.

(19) Inserting an unconscionable provision in the contract.

(20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (A) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (B) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product. This subdivision shall not apply to in-store advertising by businesses which are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code where more than 50 percent of purchases are made at the specific price set forth in the advertisement.

(21) Selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title 1.7.

(22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

(B) This subdivision does not apply to a message disseminated to a business associate, customer, or other person having an established

relationship with the person or organization making the call, to a call for the purpose of collecting an existing obligation, or to any call generated at the request of the recipient.

(23) The home solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of either subsection (h) or (i) of Section 1639 of Title 15 of the United States Code or paragraph (e) of Section 226.32 of Title 12 of the Code of Federal Regulations.

A third party shall not be liable under this subdivision unless (A) there was an agency relationship between the party who engaged in home solicitation and the third party or (B) the third party had actual knowledge of, or participated in, the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under this subdivision.

(24) (A) Charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of public social services.

(B) For purposes of this paragraph, the following definitions shall apply:

(i) “Public social services” means those activities and functions of state and local government administered or supervised by the State Department of Health Care Services, the State Department of Public Health, or the State Department of Social Services, and involved in providing aid or services, or both, including health care services, and medical assistance, to those persons who, because of their economic circumstances or social condition, are in need of that aid or those services and may benefit from them.

(ii) “Public social services” also includes activities and functions administered or supervised by the United States Department of Veterans Affairs or the California Department of Veterans Affairs involved in providing aid or services, or both, to veterans, including pension benefits.

(iii) “Unreasonable fee” means a fee that is exorbitant and disproportionate to the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, all of the following:

(I) The time and effort required.

(II) The novelty and difficulty of the services.

(III) The skill required to perform the services.

(IV) The nature and length of the professional relationship.

(V) The experience, reputation, and ability of the person providing the services.

(C) This paragraph shall not apply to attorneys licensed to practice law in California, who are subject to the California Rules of Professional Conduct and to the mandatory fee arbitration provisions of Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing

representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(25) (A) Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements that does not include the following statement in the same type size and font as the term "veteran" or any variation of that term:

(i) "I am not authorized to file an initial application for Veterans' Aid and Attendance benefits on your behalf, or to represent you before the Board of Veterans' Appeals within the United States Department of Veterans Affairs in any proceeding on any matter, including an application for such benefits. It would be illegal for me to accept a fee for preparing that application on your behalf." The requirements of this clause do not apply to a person licensed to act as an agent or attorney in proceedings before the Agency of Original Jurisdiction and the Board of Veterans' Appeals within the United States Department of Veterans Affairs when that person is offering those services at the advertised event.

(ii) The statement in clause (i) shall also be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or public gathering regarding veterans' benefits or entitlements.

(B) Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements which is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries that does not include the following statement, in the same type size and font as the term "veteran" or the variation of that term:

"This event is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries. None of the insurance products promoted at this sales event are endorsed by those organizations, all of which offer free advice to veterans about how to qualify and apply for benefits."

(i) The statement in this subparagraph shall be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or public gathering regarding veterans' benefits or entitlements.

(ii) The requirements of this subparagraph shall not apply in a case where the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries have granted written permission to the advertiser or promoter for the use of its name, symbol, or insignia to

advertise or promote the event, presentation, seminar, workshop, or other public gathering.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and which is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, “mortgage broker or lender” includes a finance lender licensed pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).

(2) This section shall not be construed to either authorize or prohibit a home improvement contractor from referring a consumer to a mortgage broker or lender by this subdivision. However, a home improvement contractor may refer a consumer to a mortgage lender or broker if that referral does not violate Section 7157 of the Business and Professions Code or any other provision of law. A mortgage lender or broker may purchase an executed home improvement contract if that purchase does not violate Section 7157 of the Business and Professions Code or any other provision of law. Nothing in this paragraph shall have any effect on the application of Chapter 1 (commencing with Section 1801) of Title 2 to a home improvement transaction or the financing thereof.

SEC. 2. Section 785.4 is added to the Insurance Code, to read:

785.4. (a) It shall be unlawful for any insurance agent who is not licensed as an attorney to deliver to a person who is 65 years of age or older, a living trust or other legal document, other than an insurance contract or other insurance product document, if a purpose of the delivery is to sell an insurance product.

(b) It shall be unlawful for any insurance agent who is licensed as an attorney to deliver to a person who is 65 years of age or older, a living trust or other legal document, other than an insurance contract or other insurance product document, unless the insurance agent complies with Section 6175.3 of the Business and Professions Code.

SEC. 3. Section 787 of the Insurance Code is amended to read:

787. Any advertisement or other device designed to produce leads based on a response from a potential insured that is directed towards persons 65 years of age or older shall prominently disclose that an agent may contact the applicant if that is the fact. In addition, an agent who makes contact with a person as a result of acquiring that person’s name from a lead generating device shall disclose that fact in the initial contact with the person.

(a) An insurer, agent, broker, solicitor, or other person or other entity shall not solicit persons 65 years of age and older in this state for the purchase of disability insurance, life insurance, or annuities through the use of a true name or fictitious name that is deceptive or misleading with regard

to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

(b) For the purposes of this section, an advertisement includes envelopes, stationery, business cards, worksheets, questionnaires, or other materials designed to describe and encourage the purchase of a policy or certificate of disability insurance, life insurance, or an annuity, or to collect personal or financial information about a prospective insured or purchaser of an annuity.

(c) Advertisements shall not employ words, letters, initials, symbols, or other devices that are so similar to those used by governmental agencies, a nonprofit or charitable institution, veterans organization or agency, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of misleading materials include, but are not limited to, those which imply any of the following:

(1) The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institutions, veterans organizations or agencies, or senior organizations.

(2) The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions, veterans organizations or agencies, or senior organizations.

(d) An advertisement may not use the name of a state or political subdivision thereof in a policy name or description.

(e) An advertisement may not use any name, service mark, slogan, symbol, or any device in any manner that implies that the insurer, or the policy or certificate advertised, or that any agency that may call upon the consumer in response to the advertisement, is connected with a governmental agency, such as the federal Social Security Administration or the United States Department of Veterans Affairs.

(f) An advertisement may not imply that the reader may lose a right, or privilege, or benefits under federal, state, or local law if he or she fails to respond to the advertisement.

(g) An insurer, agent, broker, or other entity may not use an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.

(h) An insurer may not use, in the trade name of its insurance policy or certificate, any terminology or words so similar to the name of a governmental agency, governmental program, or veterans organization or agency as to have the capacity or the tendency to confuse, deceive, or mislead a prospective purchaser.

(i) All advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer shall have written approval of the insurer before they may be used.

(j) An insurer, agent, broker, or other entity may not solicit a particular class by use of advertisements which state or imply that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy or certificate being advertised is sold on an individual basis at regular rates.

(k) In addition to any other prohibition on untrue, deceptive, or misleading advertisements, no advertisement for an event where insurance products will be offered for sale at, or as a result of, the event may use the terms “seminar,” “class,” “informational meeting,” “benefits assistance,” “qualification information,” or substantially equivalent terms to characterize the purpose of the public gathering or event unless it adds the words “and insurance sales presentation” immediately following those terms in the same type size and font as those terms.

(l) Any advertisement for an event, presentation, seminar, workshop, or other public gathering regarding veterans’ benefits or entitlements is required to comply with the requirements of paragraph (25) of subdivision (a) of Section 1770 of the Civil Code.

SEC. 4. Section 789.10 of the Insurance Code is amended to read:

789.10. (a) This section applies to the sale, offering for sale, or generation of leads for the sale of life insurance, including annuities, to senior insureds or prospective insureds by any person.

(b) A person who meets with a senior in the senior’s home is required to deliver a notice in writing to the senior no less than 24 hours and no more than 14 days prior to that individual’s initial meeting in the senior’s home. If the senior has an existing insurance relationship with an agent and requests a meeting with the agent in the senior’s home the same day, a notice shall be delivered to the senior prior to the meeting. The notice shall be a stand-alone document, with the appropriate information inserted and without any attachments. It shall be written in 16-point bold type and include all of the following, but no other, information:

(1) The agent’s full name as it appears on his or her California insurance license.

(2) The agent’s license number.

(3) The agent’s mailing address and telephone number listed on his or her California insurance license.

(4) The following disclosure:

(A) “I am a licensed insurance agent. My purpose for coming to your home is to sell, discuss, and/or deliver one of the following [indicate all that apply]:

() Life insurance, including annuities.

() Other insurance products [specify]: _____.

(B) You have the right to have other persons present at the meeting, including family members, financial advisors, or attorneys.

(C) You have the right to end the meeting at any time.

(D) You have the right to contact the Department of Insurance for information, or to file a complaint. [The notice shall include the consumer assistance telephone numbers at the department]

(E) The following individuals will be coming to your home: [list all attendees, and insurance license information, if applicable]”

(c) Upon contacting the senior in the senior’s home, the person shall, before making any statement other than a greeting, or asking the senior any other questions, state that the purpose of the contact is to talk about

insurance, or to gather information for a followup visit to sell insurance, if that is the case, and state all of the following information:

- (1) The name and titles of all persons arriving at the senior's home.
- (2) The name of the insurer represented by the person, if known.
- (d) Each person attending a meeting with a senior shall provide the senior with a business card or other written identification stating the person's name, business address, telephone number, and any insurance license number.
- (e) The persons attending a meeting with a senior shall end all discussions and leave the home of the senior immediately after being asked to leave by the senior.
- (f) A person may not solicit a sale or order for the sale of an annuity or life insurance policy at the residence of a senior, in person or by telephone, by using any plan, scheme, or ruse that misrepresents the true status or mission of the contact.